

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALI ABDULLAH,

Plaintiff,

-vs-

CIVIL ACTION NO.05-70707

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

PATRICIA CARUSO; THOMAS
BELL; S. KIMULA; J. BELEN; C.
FALKENSTEIN; D. ANDISON;
WARDEN VASBINDER; DEPUTY
WARDEN J. BARRETT; DOUGLAS
FRAKES; and CHRIS WEBB

Defendants.

**ORDER (1) ACCEPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND (2) DISMISSING PLAINTIFF'S
COMPLAINT *SUA SPONTE* WITHOUT PREJUDICE FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES AS TO CERTAIN NAMED DEFENDANTS**

The Court has reviewed the Magistrate Judge's Report and Recommendation, filed on June 23, 2005, as well as Plaintiff's objections filed thereto. The Court notes that Plaintiff, in his objections, requests that he be allowed to amend his complaint to demonstrate that he has exhausted his administrative remedies. The Court, however, finds that the Sixth Circuit has held that a plaintiff shall not be allowed to amend his complaint in this instance. The Sixth Circuit has provided:

A plaintiff who fails to allege exhaustion of remedies through 'particularized averments' does not state a claim on which relief may be granted, and his complaint must be dismissed *sua sponte*. *Knuckles El*, 215 F.3d at 642; *Brown*, 139 F.3d at 1104. Our rule in *McGore* requires that a plaintiff, who fails to make a sufficient allegation of exhaustion in their initial complaint, also not be allowed to amend his complaint to cure the defect.

Baxter v. Rose, 305 F.3d 486, 487-88 (6th Cir. 2002). Thus, the Court denies Plaintiff's request to amend his complaint. The Court notes, however, that Plaintiff's case is dismissed without prejudice.

Accordingly, **IT IS ORDERED** that the Report and Recommendation is accepted and entered as the findings and conclusions of this Court, and that Plaintiff's Complaint is dismissed without prejudice.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: August 17, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on August 17, 2005.

s/Jonie Parker
Case Manager